

Memorandum

1 Sacramento - Auditing (CO)

Date : May 17, 1978

From : Legal Counsel (GJJ) - Headquarters

Subject:

Definition of Mobile Transportation Equipment
Concerning Rock Crushers, Generators and Mobile
Conveyor Systems

Your letter to the Legal Office dated March 31, 1978 has been referred to the undersigned for response. As your request raised several legal issues, each will be discussed separately below.

1. Whether a portable rock crusher should be classified as mobile transportation equipment?

You have stated that the rock crushers at issue are extremely large pieces of construction machinery which cannot be towed at highway speeds because of the lack of springs which would cause the units to bounce out of control.

Regulation 1661(b)(1) defines "mobile transportation equipment" (M.T.E.) to include only equipment for use in transporting persons or property for substantial distances. The rock crushers will meet the requirements of the first test as the equipment is used in transporting property. When considering if the equipment meets the second test, it must be determined that the equipment is capable of traveling for substantial distances. This requirement has been interpreted by the Board to mean that the equipment must be able to travel at highway speeds. Because the equipment cannot be towed at highway speeds, we are of the opinion it cannot be classified as M.T.E.

2. Whether the portable generator should be classified as mobile transportation equipment?

The generators in question consist of a motor, a generator and a control panel. When the component parts are assembled, the entire unit is welded into a frame which is attached to a single or dual axle. Some of the units do not have springs and the majority do not have brake lights or brakes. The manufacturer of the components and

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Company have recommended that the units should not be towed in excess of 30 M.P.H. You have stated, however, that at times the units are towed on the freeway and in all probability in excess of 30 M.P.H.

As was discussed above, equipment must meet a two pronged test before it will be classified as M.T.E. It must be used for transporting property, and it must be capable of traveling for substantial distances, at highway speeds. The generators in question are used for transporting property. Therefore, if in actuality the generators are able to travel at highway speeds, the generators should be classified as M.T.E.

3. Whether the portable conveyor units should be classified as mobile transportation equipment?

You have stated that the conveyors in question are mounted on a single axle and are capable of being towed on the highway. We are of the opinion that the mobile conveyors should be classified as M.T.E. because the equipment is used to transport property for substantial distances at highway speeds.

4. Whether a Department of Motor Vehicle classification will affect the Board's classification of the equipment as mobile transportation equipment?

Although DMV may have classified the conveyors, generators and rock crushers as vehicles not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, it is the Board's position that we cannot rely on such classifications. When an analysis of the applicable sales and use tax statutes and regulations leads to the conclusion that the equipment in question is actually in the M.T.E. category, sales and use tax will be applied accordingly, regardless of the DMV classification. On the other hand, if the sales or use tax has been applied based on a DMV classification and a taxpayer disputes the consequences of the classification, the taxpayer should be instructed to furnish the Board with a copy of the corrected registration certificate or to bring the vehicle in for examination and verification of the true classification.

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If you have any questions concerning my analysis of these various issues please do not hesitate to contact me.

Susan Mengel

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